IV.   AMENDMENTS TO THE DRAWINGS

- *NO AMENDMENTS TO THE DRAWINGS*

V.   **REMARKS/ARGUMENTS**

- *STATUS OF THE CLAIMS*

Claims 18-24 have been rejected. Claim 18, 21 have been amended.

- *OBJECTIONS*

  - *Examiner's Stance*

The Examiner has rejected claims 18 because of a formality. The Examiner request the term broker performance be changed to broker's performance.

  - *Applicant's Response*

Applicant has amended the claim according to the Examiner's recommendation and requests the objection be withdrawn.

- *REJECTIONS TO THE CLAIMS*

The Examiner has rejected claims 18-24. Claims 18-20 and 24 have been rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 18-19 and 21-24 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over by U.S. Patent Publication No. 2003/0177085 to Buckwalter et al. (Buckwalter) in view of U.S. Patent Publication No. 2004/0059628 to Parker et al. (Parker). Claim 20 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over by U.S. Patent Publication No. 2003/0177085 to Buckwalter et al. (Buckwalter) in view of U.S. Patent Publication No. 2004/0059628 to Parker et al. (Parker) as applied to claim 18, and further in view of Quality Execution, LLC (QOE).

- *35 U.S.C. 112 REJECTION*

    - *Examiner's Stance*

The Examiner has rejected claims 18-20 and 24 under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter. The examiner indicates both claims lack sufficient antecedent basis for the limitation of the claim.

    - *Applicant's Response*

Claim 18 and 19 have been amended to correct the antecedent basis. Applicants respectfully request the rejection be withdrawn.

- *35 U.S.C. 103(A) REJECTIONS*

    - *Examiner's Stance*

The Examiner has rejected claims 18-19 and 21-24 under 35 U.S.C. § 103(a) as being obvious by U.S. Patent Publication No. 2003/0177085 to Buckwalter et al. (Buckwalter) in view of U.S. Patent Publication No. 2004/0059628 to Parker et al. (Parker). Claim 20 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over by U.S. Patent Publication No. 2003/0177085 to Buckwalter et al. (Buckwalter) in view of U.S. Patent Publication No. 2004/0059628 to Parker et al. (Parker) as applied to claim 18, and further in view of Quality Execution, LLC (QOE).

    - *Applicant's Response*

The Applicant appreciates the Examiner citing specific points of reference relied on. The applicant has amended the claims to more clearly identify the distinction between "intercepting" and "receiving". Support may be found at Figure 2, 3 and paragraphs 0006, 0017-0020.

Claim 18-19 and 21-24 stands rejected as obvious over Buckwalter and Parker. The rejections are respectfully traversed. Buckwalter is directed to monitoring and evaluating trade activity associated with an option order from data received at a broker after it has been submitted to the broker by a customer. See [Title, Abstract, 0020, 0037]. Once at the broker the data is distributed for processing. The disclosure of Buckwalter does not teach intercepting trade order and execution communications prior to receipt by the intended party.

The Examiner alleges "receiving" is equivalent to "intercepting". The Applicant submits, "Receiving", unlike "intercepting", fails to address the manner in which something is obtained. Intercepting, identifies gaining access ahead, (or even secretly), prior to arrival at the intended recipient (see Merriam-Webster Online entries 2,5 http://www.merriam-webster.com/dictionary/intercept%5B1%5D). Further examples in the scientific domain may be found in McGraw-Hill Dictionary of Scientific and Technical Terms, 6th Ed. under "interception". (See Appendix) For these reasons alone, the presently amended claims are patently distinct with regard to the cited references.

As the Examiner has kindly noted in the Response to Arguments 3, paragraph 0032 of Buckwalter teaches the Order Protection System 500 (OPS) operates to "amass, monitor and evaluate option order execution data" and resides downstream of the communications between the trader and broker. The Examiner relies on the Buckwalter disclosure:

> "...the customer submits an options order to a broker, requesting execution of the option order. A trading system, upon receipt of the order, timestamps the order and captures the terms of the order..."), [0020]

Applicant respectfully asserts that the Examiner's reasoning is flawed. The processing structures and data flows are figuratively illustrated in Figure 2 of Buckwalter

[CUST→TS←→OPS].   In such a defined arrangement, the trader (Customer 102), communicates directly to the broker (Trading System 200) without any interceding operation disclosed between the two.   Buckwalter passes data received by the Broker to the monitoring/analysis process of Order Protection System 500. This teaches away from the features of the presently amended claim.

The Examiner further relies on Paragraph 0037 of Buckwalter disclosing:

> "Process 200 begins at 202 where customer order is received. In some embodiments... received from trading system 200 after it has been submitted to trading system 200 by a customer."

It is clear the customer order data is not intercepted prior to receipt by the broker. Regardless that OPS 500 and TS 200 can be operated together by the same entity, [0032] does not overcome the distal relationship of the Order Protection System to the communications between customer-broker, or specifically the interception of the order data prior to receipt by the broker. If the broker operates the Process 200 as part of its system, it can not be asserted to have intercepted it prior to receipt by the broker.

Buckwalter does not teach "intercepting over said data connection one or more market order executions from said broker intended for and prior to receipt by said trader." The Examiner relies on Buckwalter [0039] teaching the capture of NBBO information at the time of receipt of the order. The reference, however, does not disclose intercepting information relative to executions or that such information is obtained from communications sent from the broker to the trader and intercepted prior to receipt by the trader.

The Applicant objects to the Official Notice. The assertion of a template Non-Disclosure Agreement reference submitted in support of the Notice does not disclose actions

by a computer-implemented method or that the withholding limitation found in the claim occurs to a broker. Contrary to MPEP 2141.02, the Examiner seeks to distill the invention down, disregarding the need to look at the claim "as a whole". (See sect II).

The Applicant respectfully requests the rejection be withdrawn as each and every limitation of the presently amended claim has not been taught. Buckwalter does not teach the limitations as asserted and fails to act as a reference or provide motivation to combine.

Applicant respectfully submits that because claim 18 is allowable, depended claim 19 and 20 are allowable and seek withdrawal of the rejections.

In light of the rational for the rejection of claim 21, the Applicant submits claim 21 is allowable for the same reasons stated above for claim 18. It is submitted that claims 22-24, which depend from claim 21 are also allowable and the rejections should be withdrawn.

Applicant respectfully request the Office withdraw all rejections and swiftly move the application to allowance.
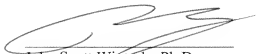
CONCLUSION TO REMARKS

Applicant asserts that this response is fully responsive to the Examiner's office action dated October 16, 2008.

Date: February 17, 2009

Respectfully Submitted,

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VI. <u>APPENDIX</u>

- None

the apex and leaf. [SCI TECH] Inserted between two original components. { in·tər′ka‚ler·ē }

intercalary day [ASTRON] A day inserted or introduced among others in a calendar, as February 29 during leap years. { in′tər·kə‚ler·ē ′dā }

intercalary meristem [BOT] A meristem that is forming between regions of permanent or mature meristem. { in′tər·kə‚ler·ē ′mer·ə‚stem }

intercalated disc [HISTOL] A dense region at the junction of cellular units in cardiac muscle. { in·tər′kā·ləd·əd ′disk }

intercalated graphite [MATER] An electrically conductive material made by impregnating graphite fiber or powder with metal-rich compounds that lodge between the stacked plates of the graphite. { ‚in·tər′kā‚lād·əd ′graf‚īt }

intercalated nucleus [ANAT] A nucleus of the medulla oblongata in the central gray matter of the ventricular floor located between the hypoglossal nucleus and the dorsal motor nucleus of the vagus. { in′tər·kə‚lād·əd ′nü·klē·əs }

intercalating agent [CELL MOL] A chemical substance that can insert itself between base pairs in a deoxyribonucleic acid molecule. { in′tər′ka‚lād·iŋ ‚ā·jənt }

intercalation [GEOL] A layer located between layers of different character. { in‚tər·kə′lā·shən }

intercalibration [ANALY CHEM] A state achieved by a group of laboratories engaged in a monitoring program in which they produce and maintain compatible data outputs. { ‚in·tər‚kal·ə′brā·shən }

intercapillary [ANAT] Located between capillaries. { ‚in·tər′kap·ə‚ler·ē }

intercapillary glomerulosclerosis [PATH] Nodular eosinophilic hyalin deposits on the periphery of glomeruli in individuals with diabetes. Also known as diabetic glomerulosclerosis; Kimmelstiel-Wilson disease. { ‚in·tər′kap·ə‚ler·ē glə‚mer·yə·lō·sklə′rō·səs }

intercardinal heading [NAV] A heading in the direction of any of the intercardinal points. { ‚in·tər′kärd·ən·əl ′hed·iŋ }

intercardinal point [GEOD] Any of the four directions midway between the cardinal points, that is, northeast, southeast, southwest, and northwest. Also known as quadrantal point. { ‚in·tər′kärd·ən·əl ‚point }

intercardinal rolling error [NAV] Quadrantal error of a gyro compass. { ‚in·tər′kärd·ən·əl ′rōl·iŋ ‚er·ər }

intercarpal [ANAT] Located between the carpal bones. { ‚in·tər′kärp·əl }

intercarrier channel [COMMUN] A carrier telegraph channel in the megahertz frequency spectrum between carrier telephone channels. { ‚in·tər′kar·ē·ər ‚chan·əl }

intercarrier noise suppression [ELECTR] Means of suppressing the noise resulting from increased gain when a high-gain receiver with automatic volume control is tuned between stations; the suppression circuit automatically blocks the audio-frequency input of the receiver when no signal exists at the second detector. Also known as interstation noise suppression. { ‚in·tər′kar·ē·ər ′nȯiz sə‚presh·ən }

intercarrier sound system [ELECTR] A television receiver arrangement in which the television picture carrier and the associated sound carrier are amplified together by the video intermediate-frequency amplifier and passed through the second detector, to give the conventional video signal plus a frequency-modulated sound signal whose center frequency is the 4.5 megahertz difference between the two carrier frequencies. Abbreviated ICS system. { ‚in·tər′kar·ē·ər ′saünd ‚sis·təm }

intercavernous sinuses [ANAT] Venous sinuses located on the median line of the dura mater, connecting the cavernous sinuses of each side. { ‚in·tər′kav·ər·nəs ′sī·nə·səz }

intercellular [HISTOL] Of or pertaining to the region between cells. { ‚in·tər′sel·yə·lər }

intercellular cement [HISTOL] A substance bonding epithelial cells together. { ‚in·tər′sel·yə·lər si′ment }

intercellular junction [CELL MOL] Any specialized region of contact between the membranes of adjacent cells. { ‚in·tər′sel·yə·lar ′jəŋk·shən }

intercellular plexus [NEUROSCI] A network of neuronal processes surrounding the cells in a sympathetic ganglion. { ‚in·tər′sel·yə·lər ′plek·səs }

intercellular space [HISTOL] A space between adjacent cells. { ‚in·tər′sel·yə·lər ‚spās }

intercellular substance [HISTOL] Tissue component that lies between cells. { ‚in·tər′sel·yə·lər ‚səb·stəns }

intercentrum [VERT ZOO] A type of crescentic intervertebral structure between successive centra in certain reptilian and mammalian tails. { ‚in·tər′sen·trəm }

intercept [CRYSTAL] One of the distances cut off a crystal's reference axis by planes. [MAP] See altitude difference. [MATH] The point where a straight line crosses one of the axes of a cartesian coordinate system. { ′in·tər‚sept }

intercept call [COMMUN] In telephone practice, routing of a call placed to a disconnected or nonexisting telephone number, to an operator, to a machine answering device, or to a tone. { ‚in·tər‚sept ‚kȯl }

intercepting sewer [CIV ENG] A sewer that receives flow from transverse sewers and conducts the water to a treatment plant or disposal point. { ‚in·tər′sep·tiŋ ′sü·ər }

interception [COMMUN] Tapping or tuning in to a telephone or radio message not intended for the listener. [HYD] **1.** The process by which precipitation is caught and retained on vegetation or structures and subsequently evaporated without reaching the ground. **2.** That part of the precipitation intercepted by vegetation. [METEOROL] **1.** The loss of sunshine, a part of which may be intercepted by hills, trees, or tall buildings. **2.** The depletion of part of the solar spectrum by atmospheric gases and suspensoids; this commonly refers to the absorption of ultraviolet radiation by ozone and dust. [ORD] Meeting or interrupting the course of a moving vessel, aircraft, or missile. { ‚in·tər′sep·shən }

intercept method [MET] A method for determining grain size or the quantity of a phase in a microstructure by measuring the number of grains or phase particles per unit length intersected by straight lines. [NAV] See Saint Hilaire method. { ′in·tər‚sept ‚meth·əd }

interceptometer [ENG] A rain gage which is placed under trees or in foliage to determine the rainfall in that location; by comparing this catch with that from a rain gage set in the open, the amount of rainfall which has been intercepted by foliage is found. { ‚in·tər‚sep′täm·əd·ər }

interceptor [AERO ENG] A manned aircraft utilized for the identification or engagement of airborne objects. { in·tər′sep·tər }

intercept station [COMMUN] Provides service for subscribers whereby calls to disconnected stations or dead lines are either routed to an intercept operator for explanation, or the calling party receives a distinctive tone that informs the party that such a call has been made. { ′in·tər‚sept ‚stā·shən }

intercept tape [COMMUN] A tape used for temporary storage of messages for trunk channels and tributary stations that are having equipment or circuit trouble. { ′in·tər‚sept ‚tāp }

intercept trunk [COMMUN] Trunk to which a call for a vacant number, a changed number, or a line out of order is connected for action by an operator. { ′in·tər‚sept ‚trəŋk }

interchange [CIV ENG] A junction of two or more highways at a number of separate levels so that traffic can pass from one highway to another without the crossing at grade of traffic streams. [ELEC] The current flowing into or out of a power system which is interconnected with one or more other power systems. { ′in·tər‚chānj }

interchangeability [ENG] The ability to replace the components, parts, or equipment of one manufacturer with those of another, without losing function or suitability. { ‚in·tər‚chānj·ə′bil·əd·ē }

interchangeable lens [OPTICS] A lens which can be used in place of another, generally of different magnification. { ‚in·tər′chānj·ə·bəl ′lenz }

interchange coefficient See exchange coefficient. { ′in·tər‚chānj ‚kō·i′fish·ənt }

interchannel crosstalk [COMMUN] Crosstalk between channels in a multiplex system. { ‚in·tər′chan·əl ′krȯs‚tȯk }

interclavicle [VERT ZOO] A membrane bone in front of the sternum and between the clavicles in monotremes and most reptiles. { ‚in·tər′klav·ə·kəl }

intercloud discharge See cloud-to-cloud discharge. { ′in·tər‚klaüd ′dis‚chärj }

intercluster medium [ASTRON] A hot x-ray-emitting gas that pervades the space between the members of a galaxy cluster. { ‚in·tər‚kləs·tər ′mēd·ē·əm }

intercolumniation [ARCH] Distance between columns, measured between the bottoms of shafts, just above the apophyge, and expressed in terms of the lower diameter of the column. { ‚in·tər‚käl·əm′nā·shən }